

Real Estate Investment Management Agreement Sample Outline

I. Appointment of Investment Manager

Discuss general role of Investment Manager, other governance docs (e.g. investment guidelines, etc.)

Assets of the account – allocation of funds to Investment Manager

II. Representations and Warranties of Investment Manager

Fiduciary definition (reference ERISA definition if appropriate)

Registrations & good standing (e.g. Advisers Act of 1940)

Statement of business qualification (advises institutional investors, experienced personnel, etc.)

Notification requirements regarding change in above

Notification of change in control of Investment Manager

Key man provisions, if applicable

III. Powers and Duties of Investment Manager

Level of authority/discretion over the following:

- Portfolio allocation
- Selection of investments
- Acquisitions
- Dispositions
- Day-to-day operations
- Financing
- Engagement of legal counsel
- Selection of contractors and consultants (property management services, etc.)
- Initiation of legal action
- Execution of documents
- Use of cash flow and proceeds (e.g. required distributions, reinvestment), notice requirements

Responsibility for the following:

- Assigning qualified personnel (dedicated team, if applicable)
- Utilization of investment committee, appropriate authority within Investment Manager's firm
- Insurance, as set forth in exhibits
- Internal and external valuations (include frequency and policy)
- Accounting policy (Fair Value GAAP)
- Maintenance of records
- Filing tax returns

- Establish tax-exempt investment vehicles
- Reporting (frequency and content as set forth in exhibit)
- Investor Meetings
- Financial statements (include audit frequency)
- Communication with custodian, investor consultant, etc.

Requirement/Process for Investor Approval

- Designated reps for Investor
- Form of Requests, minimum approval period
- Investor response timeframe
- Determination based on lack of response (automatic approval or disapproval)
- Interim governance if disapproval (e.g. for budgets)
- Circumstances for Board or other levels of Investor approval

Investor Oversight

- Audit rights
- Review process for affiliate activities, etc.

Prohibited Actions

IV. Compensation of Investment Manager

Fee Schedule established as exhibit

Use of affiliates for additional services, including compensation structure (cost vs. market), investor approval provisions, exclusions if applicable

Reimbursables and included/excluded costs

Restrictions, if any, on outsourcing duties and/or treatment of costs

V. Standard of Care and Indemnification

Fidelity bond, errors & omissions insurance requirements

Compliance with laws

Prudent person standard

Act solely in the interests of Investor

Responsibility limited to account assets

Investment Manager liability – gross or simple negligence, misconduct, etc.

Limitation on liability for contractor/consultant/appraiser/auditor acts or omissions unless, not engaged with reasonable care, situation not remediated, etc.

Investment Manager indemnification of Investor

Investor indemnification of Investment Manager and other parties (employees, directors, etc.)

VI. Effective Date, Term, Termination & Renewal

Effective Date

Initial term of contract

Automatic renewal provisions (not valid in some circumstances)

Investment Manager's right to terminate:

- Basis

- Notice provision

- Required transition services & fees

Investor's right to terminate:

- Notice provision & transition process for cause

 - Insolvency of Investment Manager

 - Material breach of contract, fiduciary duty

 - Sale, change in control of Investment Manager w/o Investor consent

- Notice provision & transition process w/o cause

Treatment of unpaid fees in the event of termination

VII. Other Activities of Investment Manager

- Acknowledgement of non-exclusivity of relationship

- Requirement for rotation policy

- Disclosure of conflicts of interest

- Limitation on self-dealing (or trading among investor accounts)

VIII. ERISA/Tax Matters

- ERISA provisions, if applicable

- UBTI provisions

- REOC status, if applicable

IX. Applicable Law, Dispute Resolution

- State of jurisdiction

- Arbitration process, if applicable

X. No Assignment

- No assignment of agreement or duties

XI. Miscellaneous

- Notices – legal addresses, acceptable forms and delivery options (e.g. facsimile, certified mail, courier)

- Counterparts

- Severability

- Submission of ADV form

- Negotiated agreement

- Non-waiver of rights

- Contractor policy

- Equal opportunity, minority contractor requirements

XII. List of Exhibits

- A - Investment Guidelines
- B - Reporting Requirements
- C - Fee Schedule
- D - Accounting Policy
- E - Valuation Policy
- F - Insurance Requirements
- G - Contractor Policy (may require minority business provisions or responsible contractor policy, bid procedures, contractor insurance requirements, etc.)

Exhibit A – Investment Guidelines

Permissible Investments

- Public vs. private
- Debt vs. Equity
- Property Types
- Geographical regions, markets
- Forward commitments/Guaranties
- Risk Profile (Investment Style)
 - Occupancy/Leasing Risk
 - Lifecycle
 - Quality

Permissible Investment Vehicles

- LLC's, partnerships, types of corporations
- Joint ventures, co-investment

Leverage

- Permitted leverage ratio, asset and investment level
- Limitations on terms (prepayment, assignment, maturity date, etc.)

Return Objectives

Diversification Requirements

Target Hold Period

Other

Investor specific requirements (e.g. % of investments in constituent area, union provisions for Taft-Hartley plans)

Exhibit B – Reporting Requirements

Standard – AIMR, REIS, etc.

Types of Reports

Quarterly reports, annual budgets and business plans, watch list
Due dates, frequency for each

Content of reports – include templates when possible

May include any or all of the following:

- Status of operations, leasing, capital improvements, asset management issues
- Financial statements (audited or unaudited), consolidated and/or individual assets
- Variance analysis
- Cash flow projections (short term and long term)
- Valuation
- Leverage schedule
- Market update
- Hold/Sell analysis
- Rent roll
- Lease expiration schedule
- Performance calculations
- Benchmark comparison

Investor Fiscal Year

Revision process, prior period adjustments

Exhibit C – Fee Schedule

Fees will include one or more of the following:

Commitment Fees

Paid during initial investment period, until majority of assets are deployed
Basis is usually committed but unfunded equity

Acquisition Fees

Generally paid at time of investment in individual assets
May be based on asset value/purchase price, cost basis, commitment amount (for loans, development or other staged investments), investor's share of invested assets (for JV's), or invested capital (i.e. net of leverage)

Asset Management Fees

Paid quarterly or monthly
May be based on cost basis, value, % of net operating income or % of cash flow; also can be gross or net of leverage

Disposition Fees

Generally paid at time of sale
May be based on gross or net proceeds, or investor's profit over cost

Incentive Fees

May be paid annually, at multi-year intervals or upon asset sales
May be aggregate for portfolio, calculated for individual assets or both
Benchmark may be an absolute hurdle rate (nominal or real, leveraged or unleveraged), floating rate (spread over treasuries, CPI, etc), NCREIF Index (in whole or part), or combination
Often includes holdback and/or clawback provisions to link measuring periods

Reimbursement Policy

Identify inclusions/exclusions such as consultant fees, brokerage commissions, investment due diligence costs, travel expenses (acquisition, asset management, investor meetings), dead deal costs, direct personnel costs, office expenses, outsourced activities etc.

Additional Services

Fee schedule may include provisions for the following:

- Property Management
- Leasing & Sales
- Development
- Financing
- Construction Management

Fee schedule should establish which party calculates (Investment Manager or Investor) and whether paid directly by Investor or drawn from account cash flow by Investment Manager.

Include examples for calculations.